

Congress of the United States
House of Representatives
Washington, DC 20515

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May 23, 2019

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
455 12th Street, SW
Washington, DC 20544

Re: MB Docket No. 05-311

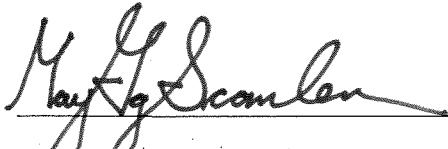
Dear Chairman Pai:

I am writing to express concern with the Federal Communications Commission's (FCC) Second Further Notice of Proposed Rulemaking (FNPRM), "Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992" (MB Docket No. 05-311). The negative effect this change will have on Public, Education and Government (PEG) channels concerns me greatly. I believe this decision undermines the 1984 Cable Communications Policy Act and will do immense damage to local communities.

Under the FCC's proposed rule, PEG channels would be thrown into financial jeopardy with local communities lacking the funds needed to support these important institutions. By adding the value of PEG channels as a benefit to be deducted from franchise fees, future franchise payments would be greatly reduced, restricting funds for PEG programming. In effect, this rule change is simply a loophole to allow cable companies to avoid paying for their use of a public medium.

PhillyCAM is one of these over 2,000 PEGs which provide essential public programs and has been instrumental in supporting the Philadelphia community for years. Through the production of local media content, PhillyCAM has provided local neighborhoods, schools, and community organizations with outlets in which they have been able to promote wellness, local performing arts, historical preservation, and community concerns. With PEG funding, PhillyCAM supports numerous educational programs from introductory video and audio production courses, to an after-school youth media program and more advanced technical workshops in editing, camerawork, news reporting and producing. PEGs, like PhillyCAM, provide countless services to their communities and in a time of ever-increasing consolidation of media monopolies, are some of the only outlets for low income and disadvantaged communities to engage with their local media.

I strongly urge you to keep local communities in mind as you consider altering the definition of a franchise fee. It is vital that all neighborhoods have equitable access to PEGs and this proposed rule would effectively hurt community engagement with public media resources, isolating lower-income neighborhoods from critical services. I ask you to please work towards ensuring local communities have fair and equal access to PEGs so that all Americans can engage with public programming.



Rep. Mary Gay Scanlon



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 23, 2019

The Honorable Mary Gay Scanlan
U.S. House of Representatives
1535 Longworth House Office Building
Washington, D.C. 20515

Dear Congresswoman Scanlan:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. As you know, the Communications Act limits franchise fees to 5% of cable revenues and defines "franchise fee" to include "any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such." 47 U.S.C. § 542(g)(1). The U.S. Court of Appeals for the Sixth Circuit has held that the terms "tax" and "assessment" can include nonmonetary exactions. *Montgomery County, Md. et al. v. FCC*, 863 F.3d 485, 490-91 (6th Cir. 2017).

In response to a remand from the Sixth Circuit, the Commission unanimously issued its Second Further Notice of Proposed Rulemaking to consider the scope of the congressionally-mandated statutory limit on franchise fees. Among other things, the Commission observed that Congress broadly defined franchise fees; indeed, with respect to PEG channels, it only excluded support payments with respect to franchises granted prior to October 30, 1984 as well as capital costs required by franchises granted after that date. 47 U.S.C. § 542(g)(2)(B) & (C). The record of this proceeding remains open, and I encourage all interested parties and stakeholders—including local franchising authorities—to provide us with relevant evidence regarding these issues so that the Commission can make the appropriate judgment about the path forward, consistent with federal law. Your views will be entered into the record of the proceeding and considered as part of the Commission's review.

Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink that reads "Ajit V. Pai".
Ajit V. Pai